

FAMILY COURT MATTER

REQUEST FOR TEMPORARY RELIEF PENDING FINAL HEARING WITH CHILDREN

The following court forms will be needed to request temporary relief:

Notice of Motion and Motion for Temporary Relief With Children
Affidavit in Support of Motion for Temporary Relief With Children
Parenting / Financial Disclosure Statement
Affidavit of Personal Service
Affidavit of Service by Mail

IMPORTANT NOTICES

- USE THESE FORM **ONLY** IF YOU AND YOUR SPOUSE HAVE MINOR CHILDREN TOGETHER.
- COURT PERSONNEL AND THE COUNTY ATTORNEY'S OFFICE **CANNOT** HELP YOU FILL OUT THESE FORMS.
- THE COURT EXPECTS EVERY PERSON WHO APPEARS IN COURT WITHOUT A LAWYER TO KNOW THE LAW. IF YOU ACT AS YOUR OWN LAWYER, YOU MUST DO WHAT A LAWYER WOULD DO.
- YOU SHOULD SEE A LAWYER IF YOU DON'T KNOW HOW TO ANSWER THE QUESTIONS ON THESE FORMS OR IF YOU THINK THE OTHER PARTY WILL HIRE A LAWYER.
- YOU **MUST** FILL OUT ALL REQUIRED FORMS AND YOU **MUST** FOLLOW THE FOLLOWING INSTRUCTIONS.
- TYPE YOUR ANSWERS OR PRINT NEATLY USING DARK INK.
- IF YOU NEED MORE SPACE TO ANSWER A QUESTION, USE AN ADDITIONAL FULL SHEET OF PAPER.

Helpful materials may be found at your public county law library. For a directory, see <http://www.lawlibrary.state.mn.us/cllppubdir.rtf> . For more information, contact your court administrator or call the Minnesota State Law Library at 651-296-2775.

INSTRUCTIONS

Step 1

Fill Out the *Notice of Motion and Motion for Temporary Relief* Form

Fill out the *Notice of Motion and Motion for Temporary Relief* form. This form tells the court and the other party what you are asking for from the court on a temporary basis until the final divorce decree is issued, and the date and time of the hearing.

FILL IN THE TOP PART OF THE FORM

The information to fill out the top part of the form can be found at the top of the *Petition for Dissolution of Marriage*. This information is known as “the caption,” and will be the same on every form you fill out.

- Fill in the “Case No.” as found at the top of the *Petition for Dissolution of Marriage*.
- On the line marked “Name of Petitioner,” write the full name of the Petitioner as found on the *Petition for Dissolution of Marriage*.
- On the line marked “Name of Respondent,” write the name of the Respondent as found on the *Petition for Dissolution of Marriage*.
- Check off whether the other party is listed as the Petitioner or Respondent in this case. Write the full name and street address of the other party.

DO NOT FILL IN THE DATE, TIME AND LOCATION OF THE HEARING YET. YOU WILL DO THAT AS PART OF STEP 4.

FILL OUT THE REST OF THE FORM

The instructions that follow are numbered the same as the questions on the *Notice of Motion and Motion* form.

1. **Mediation** - A mediator is a person outside the court system who helps the parties to reach an agreement to settle their differences, instead of having someone else (a judge) decide for the parties. **NOTE: The court cannot order you and your spouse to attend mediation if you or the other party allege domestic violence.** Check off whether you want the court to order you and the other party to use a mediator to attempt to reach an agreement regarding one or more of the issues listed. If YES, then check off which issue(s) you would like a mediator to help you with.
2. **Legal Custody** - Identifies which parent(s) will have a right to make decisions about important issues in the lives of the child(ren), including the educational, religious and medical upbringing of the child(ren). Check off the type of temporary legal custody you would like the Court to order:

- a. **Joint legal custody**
Both you and the other parent will have an equal right to make decisions regarding the educational, religious and medical upbringing of the child(ren).
 - b. **Sole legal custody**
Only one parent will have the right to make decisions regarding the educational, religious and medical upbringing of the child(ren).
3. **Physical Custody** identifies which parent(s) the child(ren) will live with. A parent who DOES NOT have physical custody usually has a right to parenting time with the child(ren). Parenting time was formerly called “visitation.” Check off which type of temporary physical custody you would like the Court to order:
 - a. **Joint physical custody**
The child(ren) will live with both you and the other parent based on a schedule that meets the needs of the child(ren). Write in your proposed schedule on the lines provided.
 - b. **Sole physical custody**
The child(ren) will live with one parent and have parenting time with the other parent.
4. **Parenting Time** - Check off whether temporary parenting time with the child(ren) should be supervised or unsupervised. Fill in the temporary parenting time schedule that you believe best meets the needs of the child(ren). NOTE: Supervised parenting time is not likely to be ordered unless unsupervised visits will cause harm to the child(ren).
5. **Child support** is money parents pay for the care, support and education of the child(ren). It may include a monthly court ordered amount for basic support, child care support and medical support. The Minnesota Department of Human Services (DHS) has created a child support calculator to estimate the amount of child support that the court may order on a case. The calculator is on the DHS website at:
<http://childsupportcalculator.dhs.state.mn.us/> .

To answer this question, check off how you would like the Court to decide the issue of temporary child support.

- a. Check box (a) if the child(ren) will live with you and you want the other party to pay you a monthly child support amount, and then fill in the amount that should be paid.
- b. Check box (b) if you will be paying temporary child support to the other parent, and then fill in the amount that should be paid.

NOTE: You may be able to ask to pay/receive more or less than the guideline amount. If you want to ask for an amount other than the guideline amount, read Minn. Stat. § 518A.43 and explain why you want to deviate from the guideline amount, and how much

you want child support to be. You can get a copy of the statute at the law library or online at <http://www.leg.state.mn.us/leg/statutes.asp>.

6. **Maintenance** - Formerly called “alimony,” maintenance is an amount paid by one person to the other to help cover living costs and personal expenses. Check off how you would like the court to decide the issue of temporary maintenance. Check box (a) if neither you nor the other party should receive temporary maintenance. Check box (b) if you do not want the court to decide the issue of maintenance at this time. Check box (c) if you want the other party to pay you a specific amount for temporary maintenance, and then fill in that amount.
7. **Attorney’s Fees** - Check off how you would like the court to decide the issue of attorney’s fees. Check box (a) if you want the court to order you and the other party to each pay your own attorney’s fees. Check box (b) if you want the other party to pay some or all of your attorney’s fees, and then fill in the amount that the other party should pay you. Check box (c) if you do not want the court to decide the issue of attorney’s fees at this time.
8. **Evaluation and Counseling** - Check off whether you would like the court to order an evaluation or counseling. Check box (a) if you want the court to order the other party to submit to an evaluation or to attend counseling for a problem such as alcohol abuse, drug abuse or anger management. If YES, check the type of evaluation or counseling you want the court to order.
9. **Use of Parties’ Home** - Check off how you would like the court to temporarily divide use and possession of the parties’ home and who should pay the mortgage and other expenses for the home:
 - Check (a) if you alone want to have sole use and possession of your home until the final decree is issued. Check off who will pay the mortgage and other expenses for the home.
 - Check (b) if you want the other party alone to have sole use and possession of your home until the final decree is issued. Check off who will pay the mortgage and other expenses for the home.
 - Check (c) if both you and the other party should share use and possession of your home until the final decree is issued. Write in the expenses for the home and who should pay each housing expense.
10. **Household Goods, Furniture and Furnishings** - Check off how you would like the court to temporarily divide the use and possession of the parties’ household goods, furniture and furnishings:

- Check (a) if both you and the other party should keep the use and possession of the items you each have in your possession until the final decree is issued.
- Check (b) if you should have sole use and possession of certain items until the final decree is issued and then list those items.
- Check (c) if the other party should have sole use and possession of certain items until the final decree is issued and then list those items.

11. Vehicles - The court may temporarily allow you and the other party to use and possess certain vehicles. The court may also order one party to make loan payments and insurance payments on a vehicle, even if that party does not have use and possession of the vehicle. If you and your spouse own any vehicles, check box (a) and for each vehicle owned by the parties, list the year, make and model, and then identify to whom use and possession of the vehicle should be temporarily awarded and who should be responsible for the payment of the vehicle's loan and insurance. If you and your spouse do not own any vehicles, check box (b).

12. Debt Payments - If you and your spouse have debts, check box (a) and for each debt that you and/or the other party have, write in the name of the creditor (to whom you owe the money), the total balance owed, the amount to be paid each month and who should pay the debt each month. If you and your spouse do not have any debts, check box (b). Use Confidential Form 11.1 to list any account numbers.

To protect the privacy of you and your spouse and children, all social security numbers, employer identification numbers, and financial account numbers must not be listed on papers you file with the court. You must use Form 11.1 when providing these confidential numbers to the court. Failure to use Form 11.1 means these numbers could be available to the general public and you could be charged court costs and the court may order other sanctions against you for the failure to keep this information private.

13. Insurance - By law, all currently available insurance coverage must be maintained and continued without change in coverage or beneficiaries. Check off whether you want the court to allow you to change certain insurance policies covering you, the other party or minor child(ren). If YES, write in the policy and the changes that you wish to make.

14. Reinstate Insurance - Check off whether you want the court to order the other party to reinstate insurance that (s)he allowed to lapse. If YES, write in the insurance that should be reinstated.

15. Income Changes - Check off whether you want the court to order the other party to notify you immediately notify you of any income raises, bonuses, or other extra income, including tax returns.

16. **Spend Income** - Check off whether you want the court to order the other party to not spend any income raises, bonuses, or other extra income, including tax returns.
 17. **Restraints** - By law, you and your spouse are not allowed to dispose of any assets except for the necessities of life, by a written agreement, or to pay for an attorney. Paragraph 17 does not require you to write anything.
 18. Check off whether you want the court to allow you to sell, give away, or discard property that may belong to you, the other party, or the parties together and explain why.
 19. **Harassing Behavior** - By law, you and your spouse cannot harass each other. You do not need to write anything for this paragraph/question.
 20. Check off whether you want the court to grant additional relief. If YES, write in the specific additional requests.
 21. You do not need to write anything for paragraph/question 21.
- **Read the Acknowledgment and sign it.** Minnesota law requires the attorneys and self-represented litigants to sign the acknowledgment. By signing this, you are verifying that your legal papers are not being presented for any improper purpose (such as to harass the other party or to delay the proceeding), that the law allows you to take this action, your statements are true and supported by evidence. If you are denying the other party's statements, your denial also must be supported by evidence.
 - **Sign the *Notice of Motion and Motion for Temporary Relief* form.** Fill in the date, your address and telephone number.

Step 2 Fill Out the <i>Affidavit</i> form
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Fill out the *Affidavit* form. This form gives the Court the information it needs to make a decision.

FILL OUT THE TOP PART OF THE FORM:

- Fill out the top part of the form the same way you did on your *Notice of Motion and Motion for Temporary Relief* form in Step 1 above.
- On the blank line after it says "STATE OF MINNESOTA, COUNTY OF _____," fill in the name of the County where you are when you sign this *Affidavit* form.
- Write your name on the line above the first numbered paragraph.

FILL OUT THE REST OF THE FORM:

The instructions that follow are numbered the same as the questions on the *Affidavit* form.

1. Check off whether you are the Petitioner or Respondent in this case as listed in the top part of the form (caption) the same way you did on the *Notice of Motion and Motion for Temporary Relief With Children*.
2. Check off whether a child protection case is or is not currently taking place in Minnesota or in another state. If YES, list the county, state and case file number(s).
3. Check off whether an *Order for Protection* involving you and the other party or the child(ren) exists in Minnesota or in another state. If YES, list the county, state, case file number(s), and date of the order. **Attach a copy of the *Order for Protection*.**
4. Write in the number of minor child(ren) that you and your spouse have together, including child(ren) born to you before or after your marriage and any child(ren) adopted into your marriage. For each child, fill in the full name, date of birth, and age.
5. Check off whether the child(ren) currently live(s) with you or your spouse or another person. If your child(ren) live(s) with another person, write in that person's relationship to the child(ren). Write in your child(ren)'s current address, and the date the child(ren) moved to that address.
6. Check off who should have temporary legal custody of your child(ren) the same way you did on your *Notice of Motion and Motion for Temporary Relief With Children* form and the reasons you think this is best for your child(ren).
7. Check off who should have temporary physical custody of the child(ren) the same way you did on your *Notice of Motion and Motion for Temporary Relief With Children*.
8. Write in why your request is best for the child(ren). Include as many details and facts as possible for each factor listed so the court can make a decision. The court considers 13 factors to determine custody if there is no custody order. Write in why you think your request regarding physical custody is in the best interests of your child(ren). Include details about each of the factors:
 - (1) the wishes of the child(ren)'s parents as to custody;
 - (2) the reasonable preference(s) of the child(ren), if the court deems the child to be of sufficient age to express a preference;
 - (3) the child(ren)'s primary caretaker;
 - (4) the intimacy of the relationship between each parent and the child(ren);

- (5) the interaction and interrelationship of the child(ren) with a parent or parents, siblings, and any other person who may significantly affect the child(ren)'s best interests;
 - (6) the child(ren)'s adjustment to home, school and community;
 - (7) the length of time the child(ren) has/have lived in a stable, satisfactory environment and the desirability of maintaining continuity;
 - (8) the permanence, as a family unit, of the existing or proposed custodial home;
 - (9) the mental and physical health of all individuals involved; except that a disability, as defined in Minn. Stat. § 363.01, of a proposed custodian or the child(ren) shall not be determinative of the custody of the child(ren), unless the proposed custodial arrangement is not in the best interests of the child(ren).
 - (10) the capacity and disposition of the parties to give the child(ren) love, affection, and guidance, and to continue educating and raising the child(ren) in the child(ren)'s culture and religion or creed, if any;
 - (11) the child(ren)'s cultural background;
 - (12) the effect on the child(ren) of the actions of an abuser, if related to domestic abuse, as defined in Minn. Stat. § 518B.01, that has occurred between the parents, or between a parent and another individual, whether or not the individual alleged to have committed domestic abuse is or ever was a family or household member of the parent; and
 - (13) except in cases in which a finding of domestic abuse as defined in Minn. Stat. § 518B.01 has been made, the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child(ren).
9. Check off whether you are asking for supervised or unsupervised parenting time the same as you did in paragraph 4 of your *Notice of Motion and Motion for Temporary Relief With Children*, and explain why you want the parenting time to be supervised or unsupervised. If you are asking for supervised parenting time, be specific about the reasons you believe the other parent's parenting time should be supervised. The court will grant parenting time that enables the child(ren) and the noncustodial parent to maintain a parent-child relationship that will be in the best interests of the child(ren). If you are requesting supervised parenting time or other limits, write in the things that have happened and are likely to happen that will put the child(ren)'s physical and/or emotional health in danger, or will impair the child(ren)'s emotional development if the parenting time is unsupervised.

10. Explain why you want the parenting time schedule that you asked for in your *Motion*. Include as many facts as possible to show the court that your proposed schedule is in the best interests of the child(ren). If there are limits, such as no overnight parenting time, explain why the court should order these limits.
11. Fill in your gross income monthly and the source for that income, such as work, MFIP, Worker's Compensation, Unemployment Compensation, etc. Next, fill in the information for your spouse's gross monthly income and source. To calculate GROSS (before taxes) MONTHLY income:
 - If you are paid one time per month, write the gross monthly amount on the line.
 - If you are paid two times per month, (such as on the 1st and 15th of the month), add together these two gross amounts, and write that amount on the line.
 - If you are paid every other week, multiply the gross amount from one paycheck by 26 (the number of times you are paid each year), and write that amount on the line.
 - If you are paid only one time per year, divide that gross amount by 12 and write that amount on the line.
12. Check your request regarding temporary spousal maintenance the same as you did on the *Notice of Motion and Motion for Temporary Relief With Children*. If you are asking for temporary spousal maintenance, fill in the amount you need each month from your spouse and explain why you are not able to support yourself. Tell the court about your work history, whether you earn more or less now than you did before, whether you have any medical, physical or psychological problems that limit your ability to work and any other facts that make it difficult or impossible to support yourself.
13. Check whether you are asking the court to order your spouse to pay your attorney's fees the same as you did in your *Notice of Motion and Motion for Temporary Relief With Children*. Explain why you need your spouse to pay your attorney's fees.
14. Check the evaluations that you asked for in your *Notice of Motion and Motion for Temporary Relief With Children*. Explain your reasons why the court should order your spouse to have these evaluations. Be specific.
15. Check who should temporarily live in your house the same as you did in your *Notice of Motion and Motion for Temporary Relief With Children*. Explain your reasons why the court should grant your request. Be specific.
16. Check whether you and your spouse have divided your personal property, household goods and furniture the same as you did in your *Notice of Motion and Motion for Temporary Relief With Children*. If you and your spouse have not divided the personal property, explain the specific terms that you want and why you should have them. Explain the specific items your spouse should have and why (s)he should have them.
17. Check whether you or your spouse own motor vehicle(s) the same as you did in your *Notice of Motion and Motion for Temporary Relief With Children*. If you or your spouse

own motor vehicle(s), write in the motor vehicle(s) you want and the reason(s) you should have the vehicle(s). Then, write in the motor vehicle(s) your spouse may have and the reason(s) your spouse should have the vehicle(s).

Check if you are going to make the payments and the insurance costs for your motor vehicle(s) the same way you did in your *Notice of Motion and Motion for Temporary Relief With Children*. If you want your spouse to make these payments, write in why your spouse should be ordered to do this. Check if your spouse is going to make the payments and the insurance costs for his or her motor vehicle(s). If not, explain who will make these payments and why.

18. Check whether you and your spouse have debts. If there are debts, explain in detail who should pay the debt and why that person should be ordered to pay that debt.
19. Check whether you want to change any insurance policies the same way you did on your *Notice of Motion and Motion for Temporary Relief With Children*. If you want to change any policy, write the name of the policy you want to change, what the change will be, and why you want to change it.
20. Check whether there is insurance you want reinstated. If YES, explain what insurance has lapsed or has been cancelled, when it lapsed or was cancelled, who let it lapse or had it cancelled, and why it should be reinstated.
21. Check if you asked the court in your *Notice of Motion and Motion for Temporary Relief With Children* to order your spouse to notify you of any salary or wage increases, bonuses or other extra income. Check all possible sources for this increased income or list the specific sources. If YES, write in why you need this information.
22. Check whether you want the court to order your spouse not to spend or use other income. If YES, explain why you want the Court to order this.
23. If you asked the Court in your *Notice of Motion and Motion for Temporary Relief With Children* to allow you to sell or otherwise dispose of specific property or items. List the specific property or items here and then explain why the court should grant you permission to sell or otherwise dispose of this property or these items.
24. If you asked the court for additional relief, explain why the court should grant this request.
25. Sign your *Affidavit* under penalty of perjury. This means you are stating that the information in the *Affidavit* is true to the best of your knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

Step 3

Fill Out the *Parenting / Financial Disclosure Statement* Form

Fill out the *Parenting / Financial Disclosure Statement* form. This form gives the court background information regarding you and the other party. This form and its Instructions can be found under the Court Forms Category of “Family” (court forms FAM107 and FAM108).

Step 4

Obtain From the Court Administrator the Hearing Date, Time and Location

When your *Notice of Motion and Motion*, *Affidavit*, and *Parenting / Financial Disclosure Statement* have been completed contact the Court Administrator’s office for a hearing date and time. Fill in the date, time, location and room number of the hearing on the first page of the *Notice of Motion and Motion* form.

Step 5

Make Copies of the Forms

1. Make **two** copies of the *Notice of Motion and Motion* form, **two** copies of your *Affidavit*, and **two** copies of your *Disclosure Statement* form and any attachments.
2. Keep **one** copy of each form for yourself (make sure to bring your copies with you to Court on the day of your hearing).
3. Step 6 tells you how to serve the second copy of each form upon the other party.
4. Step 8 tells you what to do with the forms.

Step 6

Serve Notice on the Other Party At Least 18 Days Before the Hearing Date

You must arrange for the other party to receive notice of the hearing and complete copies of all documents you have prepared for the hearing. This is called “service of process.” **A party to an action is not allowed to serve the other party to the action.** You **MUST** have someone else who is over the age of 18 serve the other party. To serve the papers by mail, follow these instructions:

1. The **server** places **one copy** of the completed *Notice of Motion and Motion* form, **one copy** of your *Affidavit* in support of your *Motion*, and **one copy** of the completed *Parenting / Financial Disclosure Statement* (and all attachments) form in an envelope. Then, the **server** writes your return address and the last known address of the other party

on the front of the envelope. The **server** then places the correct amount of postage on the envelope (the **server** may want to take the envelope to the post office to have it weighed to insure the correct amount of postage).

2. The **server** must mail the envelope containing the forms to the other party (or his/her attorney, if there is one) **at least 18 days before the hearing date.**
- **WARNING: IF YOUR FORMS ARE NOT MAILED TO THE OTHER PARTY (OR HIS/HER ATTORNEY) AT LEAST 18 DAYS BEFORE THE HEARING DATE, YOUR MOTION WILL NOT BE HEARD BY THE COURT.**

Step 7

The Person Who Mailed the Envelope Fills Out the *Affidavit of Service Form*

After the envelope containing the forms has been mailed to the other party, then the **server** (the person who mailed the forms to the other party) must fill out the *Affidavit of Service by Mail* form included in this packet. This form proves to the Court that your papers were mailed to the other party.

1. Fill out the top part of the form the same way you did on your *Notice of Motion and Motion* form in Step 1 above.
2. On the blank line after it says “State of Minnesota, County _____,” fill in the name of the county where the server was when (s)he signed the *Affidavit of Service by Mail*.
3. Fill in the name of the person who mailed the envelope.
4. Fill in the name of the person to whom the documents were mailed (the other party).
5. Write in the address of the other party where the papers were mailed.
6. Write in the name of the city and state where the post office was located from which the documents were mailed.
7. The server must sign the *Affidavit of Personal Service* under penalty of perjury. By signing the *Affidavit of Personal Service* under penalty of perjury, the server is stating that the information in the *Affidavit* is true to the best of his / her knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.
8. After it has been signed, make **one copy** of the *Affidavit of Service by Mail* for your records.

Step 8

File the Forms With the Court

The following documents **must be RECEIVED** by the Court Administrator's Office in the county where your case is located **AT LEAST 14 DAYS BEFORE THE DATE OF THE HEARING**.

- The *Notice of Motion and Motion for Temporary Relief*;
- The *Affidavit in Support of Motion for Temporary Relief With Children*;
- The *Parenting / Financial Disclosure Statement*, and all attachments;
- The *Affidavit of Service by Mail*; and
- A filing fee; if applicable.

If you did not pay a filing fee when this case was first begun, you will now need to pay the filing fee. Make checks payable to "Court Administrator."

If you cannot afford to pay the filing fee, a judge may waive it under certain circumstances. Ask court administration for an *In Forma Pauperis* (IFP) application. You need to fill out this application and sign it under penalty of perjury. This application will be reviewed by a judge who will determine whether you must pay the filing fee. If the judge does not sign the IFP form that waives the fee, you must be prepared to pay the filing fee, or the Court Administrator **cannot** accept your forms.